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PATENT

Attorney Docket No. 021645-000400US
Client Ref. No. 161364 - LS/KMG

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

ANNE-METTE HILMEN, ET AL.

Application No. 10/538,167

Filed: June 8, 2005

For: METHOD FOR EXHAUST GAS TREATMENT IN A SOLID OXIDE FUEL CELL POWER PLANT

Customer No. 20350

Confirmation No. 2248

Examiner: Edu E. Enin-Okut

Technology Center/Art Unit: 1795

AMENDMENT

San Francisco, CA 94111
July 22, 2008

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

As a precautionary measure, applicants request an extension of time, if needed and if not separately attached hereto, and authorize the Commissioner to charge the fee therefor to our deposit account in accordance with our standing authorization for such charges.

In response to the restriction requirement dated July 8, 2008, applicants elect with traverse the further prosecution of claim Group I, including claims 1-8. Within claim Group I, applicants further elect Species A.

Applicants advise that in addition to generic claims 1-3, 9 and 10, identified on page 4 of the above-referenced Office Action, claims 4 and 11 read on the elected species.

Since applicants believe that generic claims are allowable, applicants request the substantive examination of claims 1-8, including all generic claims 1-3, 9 and 10.

Applicants further request reconsideration and retraction of the restriction requirement between claim Groups I and II.

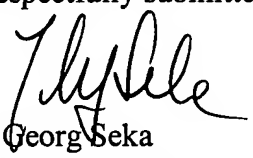
The Office Action noted that claim Groups I and II share the technical feature of treating gas exiting the anode side of the solid oxide fuel cell stack with a carbon containing fuel, wherein the anode gas and the cathode gas are kept separated by a seal system in the SOFC stack, and the main part of the H_2 and the CO in the anode exhaust are separated from the CO_2 in the exhaust. Restriction was nevertheless required because this limitation of the claims was viewed as being taught by U.S. patent 6,187,465. Therefore, the Office Action concludes, the shared technical feature cannot be a special technical feature because it is known in the prior art. Unity of invention was therefore viewed as lacking, and restriction was deemed as being proper.

Patent application restriction requirements are controlled by the MPEP, and not by PCT rules. MPEP §806.05(j) provides that for related inventions the inventions are distinct and restriction is proper if: (a) the inventions as claimed do not overlap in scope, i.e. are mutually exclusive; (b) the inventions as claimed are not obvious variants; and (c) the inventions as claimed are either not capable of use together or can have a materially different design, mode, etc. This is not the case here, as is acknowledged in numbered paragraph 2 on page 2 of the Office Action, since the two groups share the above-discussed technical feature. The fact that a prior art reference, e.g. the Galloway patent (6,187,465), might or might not relate to a shared feature is not a basis for requiring restriction.

Accordingly, applicants request that the restriction requirement be withdrawn and that all pending claims 1-13 be examined.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (415) 273-4730 (direct dial).

Respectfully submitted,



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